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Letter dated 8 July 1992 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

Annexed to his letter of 7 May 1992, the Chargé d'affaires a.i. of the Greek Cypriot Permanent Mission to the United Nations has circulated as a document of the United Nations (A/47/204-S/23887 and Corr.1) certain extracts from the report of the European Commission of Human Rights, Application No. 8007/77, on the basis of the decision adopted by the Committee of Ministers of the Council of Europe on 2 April 1992.

The above-mentioned extracts selected and circulated as a document of the General Assembly and of the Security Council do not include the memoranda submitted to the Committee of Ministers by the Government of Turkey, in which it reflected its position on Application No. 8007/77.

In order to provide member countries with a full and balanced picture of the case dealt with by the Commission, the Government of Turkey wishes to bring to the attention of the member countries the enclosed text of its memoranda presented to the Committee of Ministers of the Council of Europe (see annex).

I shall be grateful if the text of the present letter and its annex is circulated as a document of the General Assembly, under item 45 of the preliminary list, and of the Security Council.

(Signed) Mustafa AKŞIN
Ambassador
Permanent Representative

* A/47/50.

ANNEX

Memoranda by the Government of Turkey on the question of human rights in Cyprus, submitted to the Committee of Ministers of the Council of Europe

I. Introduction

1. It is regrettable that the Committee of Ministers has once again to expend valuable time on yet another application by the Greek-Cypriot Administration on an issue on which it had adopted two Resolutions in 1977 and 1979 and had completed its consideration of an identical case.

Turkey is committed to the European Convention on Human Rights and has spared no effort to extend a constructive co-operation for the well functioning of its organs. The inter-state complaint, made in 1982 against Turkey by five Council of Europe member-governments, which was concluded with a friendly settlement, has been an occasion for the demonstration of this understanding and attitude of Turkey. However, Turkey also strongly believes that the abuse for political purposes of the European Convention on Human Rights and its control mechanism as well as of the organs of the Council of Europe should not be tolerated.

It should be a well known fact that the Cyprus problem arose in 1963 when the Greek-Cypriot side at first uni-

laterally abrogated the 1960 Constitution, in contravention to the international treaties, in order to put an end to the bi-communal basis of the Republic and then tried to implement the infamous Akritas plan aimed at the physical elimination of the Turkish-Cypriot Community. Consequently, the Turkish-Cypriots were ejected by use of force from their equal partnership in the State. They were forced out of the Parliament, the Government, all Government institutions and even their homes.

Despite this historical fact, the Greek-Cypriot side tries to present the question of Cyprus as one that started with the Turkish peace operation in 1974. In line with this approach, the Greek-Cypriot Authorities seize every occasion and use, rather abuse, all international instances to focus attention to the consequences of the events of 1974. This is part and parcel of the Greek-Cypriot policy of a constant campaign of political propaganda and slander against Turkey and the Turkish Republic of Northern Cyprus. No international institution, whatever its vocation might be, is immune from the implementation of this policy. No doubt, such an attempt to use the European Convention on Human Rights and its control mechanism for political purposes cannot be conducive to the efforts towards finding a negotiated solution to the Cyprus problem.

In the search for a solution to the Cyprus problem,

preference of propaganda to serious negotiations might be the deliberate choice of the Greek-Cypriot leadership who have recently rejected the United Nations' Secretary General's two Draft Agreements of January 17, 1985 and March 29, 1986. However, it is a duty that befalls on the other members of the international institutions not to permit the use of their organisations for such ill-attempts.

It is due to this understanding and attitude, along with her sincere belief that the abuse for political purposes of the organs of the Council of Europe is in no way to the benefit of our organisation that Turkey, having made every effort, albeit in vain, during the proceedings on admissibility stage, to show to the Commission the very obvious purposes and legal deficiencies of the application, decided not to take part in the proceedings of the Commission after the admissibility stage. The report of the Commission is unacceptable to Turkey because it does not conform to the letter and the spirit of the European Convention on Human Rights and to the basic Principles of International Law.

With this memorial and during the debate on this issue in the Committee of Ministers, once again Turkey would like to present her views on the legal and factual elements contained in the Commission's Report and to shed more light to the political motives of the Greek-Cypriot Administration with the sincere hope that such attempts to exploit the

Convention and the organs of the Council of Europe should be brought to an end.

II.

General Observations

2. Being called upon to consider the report of the European Commission of Human Rights (hereafter: the Commission) on Application 8007/77, the Committee of Ministers - once again - is asked to deal with the provisional outcome of another initiative by the Greek-Cypriot Administration of using the provisions and the machinery of the European Convention on Human Rights (hereafter: the Convention) for the pursuance of a strategic political goal, namely the complete domination by the Greek-Cypriots of the island of Cyprus in flagrant violation of binding international undertakings, the Zurich and London Agreements, the 1960 Treaty of Guarantee, the 1960 Treaty of Alliance, and the Constitution of the Republic of Cyprus drawn up in pursuance of these agreements.

3. The report of the Commission deals with a third Application by the Greek-Cypriot Administration following the events of 1974. This third Application is essentially the same as the relevant parts of the first two applications made by the Greek-Cypriot Administration (Applications Nos. 6780/74 and 6950/75). This third Application, therefore, should never have been declared admissible by the Commission. The Government of Turkey will return to this issue at a later

stage in the development of its present observations.

4. At this point it is noteworthy that the third Application was filed with the Commission on September 6, 1977, that is precisely during the period the Committee of Ministers was considering the report of the Commission on the first two applications, and when it became obvious that the Committee of Ministers was leaning towards a conclusion not favorable to the Greek-Cypriot Administration. The filing of the third Application was in fact timed in such a way that it should be perceived as a deliberate attempt to influence the outcome of the then ongoing deliberations of the Committee of Ministers. As it is well known, the Committee of Ministers disregarded such tactics and disposed of the first two applications through its decision of October 21, 1977, later reconfirmed by Res. DH(79)1, by calling on both sides involved to resume the talks under the auspices of the Secretary General of the United Nations so as to reach a permanent respect for human rights in Cyprus through the establishment of peace and of confidence between the two communities on the island. In doing so, the Committee of Ministers put the two applications in their proper political perspective.

5. It is most unfortunate that the third Application which, like the two previous ones, has a purely political character was declared admissible by the Commission. It is regrettable that the Commission took this decision on

July 10, 1978, i.e. at a time when it had to be aware of the attitude taken by the Committee of Ministers in its decision of October 21, 1977 by refusing to consider an earlier and similar initiative taken by the Greek-Cypriot Administration under the Convention (first and second application) as an issue separate from the overall Cyprus problem in all its complexity. As it is well-known to all Member States of the Council of Europe, there is at present no other way of establishing peace and mutual confidence on the island as a means of securing full respect of human rights to members of both sides, but through contacts between both sides under the auspices of the Secretary General of the United Nations acting within the mission of good offices entrusted to him by the Security Council of the United Nations.

The Government of Turkey is confident that this state of facts will be taken into consideration by the Committee of Ministers when disposing of the Report on the third Application. A different approach by the Committee of Ministers would without any doubt affect negatively the good offices which the Secretary General of the United Nations is currently deploying and thus would put into jeopardy the very prospects of a durable solution of the Cyprus problem.

6. It seems as if the three applications filed by the Greek-Cypriot Administration against Turkey have one tactical common object and purpose:

- to negatively influence the efforts of the Secretary General of the UN;

- to keep available permanently, especially for the purpose of negatively influencing Turkey's relations with the western countries and jeopardizing Turkey's rightful place in Western Europe, a reference tool for depicting Turkey as a permanent violator of Human Rights on the Island of Cyprus;

- to be part of a continuing series of applications under the Convention so as to detract ultimately the umbrella for talks between the two sides from the Secretary General of the UN, acting within the framework of the mission of good offices entrusted to him by the Security Council, to a different forum.

On this latter point, it should be made clear that the Commission, by acting as it did (see 107-112 hereafter) in dismissing the objection as to the admissibility of the third Application on the ground that it was essentially the same as the two previous applications, has practically issued an open-ended invitation to the Greek-Cypriot Administration for filing, in the future, additional applications on identical issues, only "embellished" each time by the additional argument of a continuation in what the Commission erroneously found as a violation in its first and second reports.

7. If there were any doubts as to the political nature of the actions by the Greek-Cypriot regime, suffice it to recall the way it handled the timing not only of the filing of the third Application, as recalled above, but also the initiatives taken as to the timing of the consideration

of the Report on the third Application by the Committee of Ministers.

8. The report of the Commission was put on the agenda of the 374th meeting of the Ministers' Deputies (June 1984). At that occasion the Greek-Cypriot Delegate requested consideration of the report at the earliest possible date by the Committee of Ministers meeting at ministerial level. The reason for the alleged urgency and the need for involving the Committee of Ministers at ministerial level (which usually is not the case for consideration of reports submitted by the Commission) was the fact that this was, according to the Greek-Cypriot Administration, the first case since the end of the Second World War of continuing massive and organized violations of Human Rights in Europe, and also because of the alleged striking importance of this case as a test case for the effectiveness of the entire Convention. And yet, three months later, in early October 1984, the same Greek-Cypriot delegation, without giving any reasons, asked for a post-ponement of consideration of the Commission's report by the Committee of Ministers. This unusual "moderation" by the Greek-Cypriot Administration in its acts within the Committee of Ministers was most likely dictated by a request made by the Secretary General of the United Nations, that both sides should refrain from actions tending to prejudice the Secretary General's efforts, and also because the Greek-

Cypriot Administration most certainly expected the Secretary General of the United Nations to make suggestions which would favor the ultimate political goal of complete domination of Cyprus by the Greek-Cypriot Administraton. Indications to this effect are contained in the statement by the Greek-Cypriot Delegate at the Ministers' Deputies' meeting on February 14, 1986. In this statement, the Delegate of the Greek-Cypriot Administration pointed to the fact that there had been, in the view of his Administration, "no progress in the efforts of the United Nations' Secretary General"; and the Greek-Cypriot Delegate to add: " due to the Turkish intransigent positions."

9. This latter statement does not conform with reality. As it is well known the Secretary General of the United Nations, when meeting with President Denktas from the Turkish-Cypriot side and Mr. Kyprianou, President of the Greek-Cypriot Administration, in New York on January 17, 1985, made suggestions for a draft agreement which was accepted without any reservations by the Turkish-Cypriot side, while Mr. Kyprianou rejected those suggestions. Numerous contacts followed the unsuccessful outcome of the January 17, 1985 meeting and on March 29, 1986 the Secretary General of the United Nations presented to the Turkish-Cypriot and Greek-Cypriot sides a draft agreement incorporating a framework for a future federal state and establishing a negotia-

tion process for working toward an overall settlement. In his letter dated March 29, 1986 addressed to Mr. Denktas and Mr. Kyprianou, presenting the Draft Framework Agreement, the UN Secretary General was underlining that: "...this Framework Agreement is an indispensable step in an ongoing process. Both sides have agreed on the matters that will be negotiated after the Framework Agreement is accepted, and to do so in good faith..." ... "...Acceptance of the Draft Framework Agreement will allow, for the very first time, all the outstanding issues to be tackled in earnest and in a decisive manner as an integrated whole" ... "... I hope that the two sides will be able to advise me soon of their acceptance of the Draft Framework Agreement" ... "I believe it to be of the greatest importance that we should all now seize the present opportunity to break through to a just and lasting solution of the Cyprus problem." ...

This letter clearly shows that the Secretary General offered both sides a package deal constituting "an integrated whole" in pursuance of the clear understanding that the two sides had reached with him, and that he was expecting a formal and unconditional acceptance of the Framework Agreement he proposed. In the Secretary General's proposals, the acceptance by both sides of the Draft Framework Agreement was a pre-condition for further discussions and ultimate resolution of the outstanding issues.

President Denktas on behalf of the Turkish-Cypriot side, again expressed unreserved agreement with the proposals, by stating in his letter of April 27, 1986 to the Secretary General, that he was "...prepared to sign the Draft Framework Agreement as it is...", whereas Mr. Kyprianou, acting on behalf of the Greek-Cypriot side, did not accept the Secretary General's proposals 1/

This rejection of the Draft Framework Agreement by the Greek-Cypriot side is reflected in the Secretary General's report of 11 June 1986 to the Security Council (S/18102/ADD.1.) in following terms:

"...I regret that since one side is not yet in a position to accept the Draft Framework Agreement of 29 March 1986, the way is not yet open to proceed with the negotiations I have proposed for an overall solution."

In the light of these developments, qualifying the failure of the efforts of the UN Secretary General as "due to the Turkish intransigent positions" is taking an astonishingly broad liberty with the true and verifiable facts.

10. In fact, having rejected the January 1985 proposals of the United Nations Secretary General, the Greek-

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1/ The letters to the Secretary General of the UN by both Mr. Denktas and Mr. Kyprianou are attached hereto as Annexes 2 and 3.

Cypriot Administration took the report of the Commission on the third Application out of the drawer and requested in February 1986, (see CM/Del/Concl.(86) 393 item 11) that the Committee of Ministers goes ahead with the consideration of the report. This move by the Greek-Cypriot Administration, coming at a time when the UN Secretary General was making renewed efforts and contacts following the failure of his January 1985 initiative due to Greek-Cypriot intransigence, proved to be an anticipation of the forthcoming Greek-Cypriot refusal of the Secretary General's March 29, 1986 proposals.

The fact that this Greek-Cypriot move came after the inter-State complaint made against Turkey by five Council of Europe Member countries was concluded with a friendly settlement, sheds more light on the political motives of the Greek-Cypriot Administration.

11. In its decision of October 21, 1977 and again in Resolution DH (79)1 referring to the report on the first two applications by the Greek-Cypriot regime, the Committee of Ministers has quite rightly placed the issues at stake in the wider context of the Cyprus problem in general, and insisted that both sides should continue their talks under the auspices of the Secretary General of the United Nations.

The memorandum prepared by the Turkish Republic of Northern Cyprus, which is attached to this document as Annex

1, gives an account of the Cyprus problem in general and more specifically presents a full outline of the question of human rights in Cyprus from the Turkish-Cypriot point of view and of the intransigence of the Greek-Cypriot Administration in the search for a peaceful solution of the Cyprus problem.

12. Having thus drawn the attention of the Committee of Ministers in the first place to the political goals and implications of the third (as well as of the two previous) Application(s) by the Greek-Cypriot Administration, it becomes clear that this political action also deserves a political response.

13. The Government of Turkey is of the opinion that the findings and conclusions of the Commission fail to take into account all the relevant elements of the question of human rights in Cyprus and therefore regrets to feel compelled to formulate serious criticisms against both, the decision of the Commission on admissibility as well as the opinion expressed in its report on the merits of the case.

In the following two chapters, the Government of Turkey conveys to the Committee of Ministers its observations as to the decisions and opinions of the Commission which, for most parts, are legally erroneous and therefore wrong. Since most of the deficiencies have occurred in the decision on admissibility of July 10, 1978 and were only repeated in the opinion contained in the Report of October 4, 1983, the grea-

ter part of the two following chapters is devoted to a discussion of the admissibility decision.

III.

Legal Observations on the Decision (July 10, 1978) Accepting Admissibility of Application 8007/77

14. The decision on admissibility taken on July 10, 1978 is reproduced in Appendix II of the Report. In fact, it covers in volume half of the entire Report.

This decision is open to serious criticism since a great number of statements it contains do not resist thorough legal analysis.

The Turkish Government therefore urges the Committee of Ministers to consider with great care the observations which follow. They denote serious deficiencies in both the form and the substance of the Commission's approach. The Government of Turkey hopes, therefore, that the Committee of Ministers will do nothing which could be interpreted as an endorsement of the erroneous position adopted by the Commission on the points of procedure and substance which are considered hereafter.

15. The Government of Turkey notes with regret that the Commission has in its 1978 Decision followed very closely the reasoning and often the terminology of its 1975 Decision on the earlier applications (Nos. 6780/84 and 6950/75) made by the Greek-Cypriot Regime. (The observations and views of the Turkish Government with regard to the report of the Commission on these applications were submitted to the

Committee of Ministers in the Turkish Government's Memorial of May 24, 1977 - CM(77)117). In so doing, the Commission in many cases failed to discuss or even, it seems, to take into account additional legal considerations and further developments of facts which were placed before it by the representatives of Turkey. As a result, in simply restating its former conclusions the Commission has erred in law. Moreover, in failing to discuss the various legal arguments put to it, the Commission conveys the impression of approaching the third Application with a closed mind and reaching its conclusions by arbitrary methods amounting to a denial of justice.

16. The Turkish Government does not suppose that the Committee of Ministers will wish to see the whole of the Turkish argument before the Commission recapitulated in detail. At the same time, if the Committee of Ministers is to appreciate the extent to which the Commission has disregarded arguments each of which by itself is sufficient to establish the inadmissibility of the proceedings, some detailed scrutiny of the arguments presented to the Commission on behalf of Turkey is unavoidable. But the Government of Turkey will endeavor to keep these comments as brief as the complex nature of the case permits.

17. The Commission dealt with the range of arguments presented by the Turkish Government under five heads (as described in the Decision):

1. Locus standi of the applicant Government;

2. The Commission's competence ratione loci in relation to the jurisdiction of Turkey;

3. Exhaustion of domestic remedies and the observance of the six months' rule;

4. The objection that the present Application is the same as applications Nos. 6780/74 and 6950/75;

5. Whether the Commission is precluded from dealing with the present Application by the Committee of Ministers' decision of 21 October 1977 (to this issue we have to add an assessment of Resolution DH (79)1.)

18. The Government of Turkey will review the Decision and hence the basis for the conclusions formulated in the report, by reference to each of these heads, though its comments on some will be shorter than its comments on others. In so doing, the Government of Turkey ventures to emphasize that the conditions of admissibility are cumulative and that if any one of them is not established, the Application should in fact have been declared inadmissible.

I. As To The locus standi of The Applicant Government

19. The first point which requires comment is the rejection by the Commission of the Turkish Government's argument that the Greek-Cypriot Administration in Cyprus lacks locus standi.

20. The Turkish Government contended before the Commission that there are two grounds on which the Greek-Cypriot Administration lacks locus standi to make the present

application. The first is that, in the absence of recognition by Turkey of the Greek-Cypriot Regime, there is no authority in Cyprus capable of validly instituting proceedings against Turkey in the name of Cyprus. The second ground is that the unconstitutional manner in which the Greek-Cypriot Regime assumed power involved a breach of treaty obligations owed to Turkey and thus precluded the Greek-Cypriot Regime from effectively acting in law against Turkey.

A. The Effect of Turkey's Non-Recognition of the Greek-Cypriot Regime

21. The Government of Turkey recognized the State of Cyprus as established in 1960 by international treaties. It does not, however, recognize the Greek-Cypriot Regime which purports to act in the name of Cyprus. Accordingly, in the proceedings before the Commission, the Turkish Government submitted that the Greek-Cypriot Regime was unable validly to initiate the present proceedings. The Commission rejected this contention. The Government of Turkey believes that the Commission was wrong to do so and maintains the submission that the Application remains inadmissible on this ground.

22. The contention involves the following elements:

(i) Turkey, as a sovereign State decides to recognize or not the governments of foreign States.

(ii) Turkey does not recognize the Greek-Cypriot

Administration as the government of Cyprus. There are good legal and political reasons for this -- but they do not require further elaboration here.

(iii) The general principle of international law entitling governments with the right not to recognize a regime, carries with it the right not to have relations with that regime and also the right not to be put in a position in which direct contacts of any degree whatsoever are imposed upon the non-recognizing government. This general principle also englobes the Convention.

(iv) Accordingly, since the Greek-Cypriot Regime cannot impose upon the Turkish Government the necessity of direct contact with itself, the Greek-Cypriot Regime is not entitled to institute proceedings against Turkey under the Convention, the procedures of which, notably those contemplated in Article 28, entail a direct relationship between an applicant and a respondent state.

(v) This is not to say that the substantive provisions of the Convention are not in force as between the State of Cyprus, as established by international treaties in 1960, and Turkey. Nor does it mean that the Greek-Cypriot Administration cannot institute proceedings against other parties to the Convention, the Governments of which are prepared to recognize it as the Government of Cyprus. Nor does it signify that other Parties to the Convention may not

institute proceedings against Turkey, provided that Turkey recognizes their governments. It means only that the Greek-Cypriot Regime may not commence such proceedings against Turkey.

(vi) The possibility that treaty relations between States may be interrupted but not abrogated in time of peace by the action of one party alone is fully recognized by States and reflected in the Vienna Convention on the Law of Treaties. Article 63 of the Treaty, in providing that the severance of diplomatic relations between parties to a treaty does not affect the legal relations established between them by the treaty, states a clear exception operative in those cases where the existence of diplomatic or consular relations is indispensable for the application of the treaty. If, as is evident, the operation of treaties may thus be affected by the unilateral act of breaking off diplomatic relations, there is nothing out of the way in the submission that the non-recognition of a government -- and thus the non-establishment of relations with it -- may have the same effect.

23. These contentions of the Turkish Government were developed fully in the course of written and oral argument during the admissibility stage. The Commission, however, rejected these contentions by a line of reasoning which the Government of Turkey respecfully finds itself unable to

share. The Government of Turkey therefore offers the following observations upon the terms of the decision of the Commission.

24. First, the Commission erred when, after noting that Turkey does not dispute the continued existence of Cyprus as a State and Party to the Convention, it concluded thus: "It follows that the application cannot be rejected on the ground that it has not been brought in the name of Cyprus as a 'High Contracting Party' within the meaning of Article 24". (See the Decision on Admissibility, paragraph 5 of the Chapter "The Law")

25. In the view of the Government of Turkey this statement of conclusion, on the basis of the precedent statement that Turkey does not dispute the continued existence of Cyprus as a State and Party to the Convention, is a <u>non-sequitur</u>. It disregards entirely the fact that <u>so far as Turkey is concerned</u> there is <u>no government</u> of Cyprus capable of acting internationally in the name of that State. This contention of the Turkish Government is in no way met by the pretence that in some way it diminishes the substantive protection conferred by the Convention on the people of Cyprus. The substantive operation of the Convention persists. On the procedural level, however, the Greek-Cypriot Regime cannot make an inter-State application against Turkey. Other Parties to the Convention, the governments of which Turkey

recognizes, may make such applications; and it is by this means that the collective interest in the protection of substantive rights under the Convention may be procedurally implemented.

26. Second, the Commission misdirected itself when, in paragraph 7, Chapter "The Law", of the 1978 Decision, it stated - in dealing with the objection that "the applicant Government" is not entitled to represent the Republic of Cyprus - that it "must follow international practice, particularly of the Council of Europe, as regards the status of such a Government". The duty of the Commission, in the submission of the Government of Turkey, is to apply international law and international law only. This law in the present instance consists not only, of course, of the European Convention on Human Rights, but also of customary international law, against the background of which the Convention must be read. "International practice" as such is not immediately and automatically part of international law and cannot, therefore, be directly applied as an element in the law employed by the Commission. In certain circumstances, it is true, "international practice" may develop into law or may be treated as evidence of a received and therefor valid interpretation of a binding legal text. But these circumstances always involve the acquiescence or at least the non-objection of the State against which the practice is

involved. The notion that a rule of law can develop against the express objection of a State and then be invoked against that State is quite contrary to fundamental international legal principles. The Government of Turkey has always objected to the attribution of any international legal position to the Greek-Cypriot Regime. If other States wish to have relations with that regime, that is their own affair. But what they do, though it may in theory be generalized into a "practice", cannot bind the Government of Turkey.

27. Furthermore, even if such alleged "practice" were material in the present context, it is to be noted that even - or, rather, particularly - in the Council of Europe acceptance of the representative character of the Greek-Cypriot Administration has not been universal, neither prior nor subsequent to the decision on admissibility.

In two important instances, one of them linked to the life of the Convention, the Council of Europe organs have not accepted that the Greek-Cypriot Administration represents the Republic of Cyprus. And in another instance, the Committee of Ministers, although urged to do so by the Secretariat, has not objected to a specific act by Turkey refusing to enter into treaty relationship with the Greek-Cypriot Administration.

The first instance to be mentioned concerns the refusal, by the Parliamentary Assembly of the Council of

Europe and following the events in Cyprus in late 1963, to accept a Parliamentary Delegation from Cyprus representing only the Greek-Cypriot Community. The reason for this attitude was made quite clear in the Report of the Assembly's Credentials Committee of 23 April 1964. The Committee recognized that:

> "The co-operation between the Greek and Turkish communities provided for in Cyprus' constitutional system and the fundamental rights and liberties safeguarded in Part II of the Cyprus Constitution must be regarded as an integral part of the rule of law whose paramountcy has been recognized by the Council of Europe member States"

This point was fully elaborated before the Commission, on behalf of Turkey, at the admissibility stage. Yet, the Commission made no attempt to grapple with this important point or its implications and, by its silence, treated the argument as if it had never been made. This is a material and serious failure on the part of the Commission.

Furthermore in January 1977, when the question of inviting "the Speakers and Clerks of all Council of Europe Member States Parliaments "to attend the opening ceremony of the new Council of Europe building arose, the Bureau of the Parliamentary Assembly opposed the dispatch of an invitation to the Greek-Cypriot side, on the ground that "there was no Parliament (in Cyprus) that represented the whole population." This decision was communicated to the Chairman

of the Ministers' Deputies by the President of the Assembly in a letter dated 10 January 1977 (See: CM/DEL/CONCL(77) 264-APPENDIX X-ITEM XXVII(B)).

28. The Assembly, more recently, when being confronted again with the representation of Cyprus, filled only one out of the three seats normally reserved for the Member State "Republic of Cyprus", and this member was in fact admitted as representative of the Greek-Cypriot Community, as underlined in Mr. Butty's Report on behalf of the Committee on Rules of Procedure (Doc. 5108).

It is noteworthy to recall, that the aforementioned Report of the Assembly Committee contains in its paragr. 28 the following passage:

> "However, I am convinced that it will be possible to surmount these obstacles when real progress is made in the inter-community negotiations. Without wishing to go into the problem of those negotiations in depth - which would be outside the terms of reference of the Committee on Rules of Procedure - we should therefore like to express the hope that the very recent initiative by the UN Secretary General on 8 August 1983 may pave the way for such progress and that the parties to the dispute will take this opportunity to tackle swiftly the problem of the Cypriot delegation to the Council of Europe's Parliamentary Assembly. This could be done either within the framework of the inter-community negotiations themselves or, if that is impossible, since the negotiations are more concerned with the problem as a whole, in parallel, by laying down a special procedure inspired by the principles of the 1960 Constitution which would permit the

> appointment of a complete and pluralist delegation comprising members of both communities. This aim currently seems to be the only point of agreement between the two sides, but it is only by achieving it that the whole of Cyprus would be represented in the Council of Europe's Parliamentary Assembly."

One would have hoped that the Commission on Human Rights had manifested a legal accuracy similar to that shown by the Assembly, quite apart from the wisdom the Assembly has demonstrated in the report just quoted. If so, the Commission would have necessarily come to the conclusion that the application was not admissible.

It should also be noted that, during the April 1986 session of the Parliamentary Assembly of the Council of Europe, the credentials of the Greek-Cypriot representatives have been contested on the ground that, "The newly elected representatives cannot in any way represent the whole of the Republic of Cyprus", and the Assembly has decided to refer the matter to the Political Affairs and Legal Affairs Committees for their opinion, as proposed by the Credentials Committee.

29. There is another matter in the practice of the Council of Europe which is not in line with the sweeping statement of the Commission in its decision on admissibility according to which Council of Europe practice would recognize the representative character of the Greek-Cypriot Administra-

tion for the whole of Cyprus; this concerns the status of the member of the Court of Human Rights and the member of the Commission on Human Rights on the seats created in these two Convention bodies on behalf of Cyprus. As it is well known to the Committee of Ministers, there is in existence an understanding that both these gentlemen, who were elected to their high offices prior to 1963, would remain in office even after the expiration of the time period for which they had been elected since there was, in the view of the Council of Europe, no authority available acting on behalf of the Republic of Cyprus as Contracting State to the Convention and thus entitled to make proposals for their reconfirmation or their replacement. The Commission totally ignores this important point when asserting that Council of Europe practice would point to a full recognition of the representative character of the Greek-Cypriot Administration as the Government of the Republic of Cyprus.

30. The third instance which demonstrates that the Committee of Ministers in its own practice has carefully avoided to impose on Turkey any recognition of the Greek-Cypriot Administration as the representative of the Republic of Cyprus came to light with reservations made by Turkey, when ratifying in 1975 some Council of Europe Conventions, to the effect that

"Le Gouvernement de Turquie, tout en

> ratifiant (suit le titre du traité) déclare qu'il ne se considère pas engagé à executer les dispositions dudit Accord envers l'Administration Chypriote Grecque qui n'est pas habilitée constitutionnellement à representer à elle seule la République de Chypre."

At the initiative of the Secretariat of the Council of Europe, the Committee of Ministers had spent long meetings for discussing this matter, and in the end did not pass judgment on Turkey because of this reservation, which since then remained in effect. Reference is being made in this respect to the Conclusions of the 253rd and 254th Meetings of the Ministers' Deputies as well as to the Notification by the Secretary General of the Council of Europe (see for example letter No. JJ 172 C of 3 March 1976). How is it possible that the Commission, in spite of these well-known facts, could have stated in its Decision of 1978 that the practice of the Council of Europe confirms the status of the Greek-Cypriot Administration as the Government representative of the Republic of Cyprus?

31. The Commission also erred in seeking to escape from the consequences of non-recognition by placing emphasis upon the concept of "collective enforcement" and by stating that the "special 'objective obligations' of a High Contracting Party are obligations towards persons within its jurisdiction, not to the other High Contracting Parties". (The Law, §§ 10-11).

The Turkish Government does not need to take a position as to whether these propositions are correct or not. They simply do not have a bearing on the issue which faced the Commission. This was whether the procedural requirements of the Convention with regard to the settlement of inter-State complaints could be applied against a Party without putting it in a position in which it would be obliged to have a degree of relationship with the complainant inconsistent with the right of the Respondent State to refrain from recognition of the claimant. The character of the substantive obligations created by the Convention is not relevant to the question of the procedure by which they are to be implemented.

B. The Unconstitutional Quality of the Action of the Greek-Cypriot Regime

32. Although there is to some extent an overlap between the arguments relating to Turkey's non-recognition of the Greek-Cypriot Regime (dealt with in the previous section) and the subject of the unconstitutional quality of the action of the Greek-Cypriot Regime, further consideration of the latter aspect of the matter is required. Such consideration must be prefaced by recalling the special, indeed virtually unique, character of the unconstitutional quality of the Greek-Cypriot Regime. This is not a case of what may be called "simple" unconstitutionality, where one authority

merely usurps power in defiance of the internal laws of a country. This is a case where the abandonment of constitutional requirements also involves the violation of a treaty - an international covenant solemnly concluded after prolonged negotiations for the purpose of guaranteeing the constitution in question.

33. The Government of Turkey contended before the Commission that the institution of proceedings by the Greek-Cypriot Regime was unconstitutional and could not form a valid basis for any action by the Commission against Turkey. The Commission rejected this contention entirely on the basis of its reasoning in its earlier decision on the previous Greek-Cypriot applications. In particular the Commission invoked three elements from its earlier decisions:

(i) "regard must be had not only to the text of the Constitution";

(ii) regard must be had to "the practice under it, especially since 1963";

(iii) "regard must be had to the purpose of Article 24 of the present Convention . . . the protection of the rights and freedoms of the people of Cyprus under the Convention should consequently not be impaired by any constitutional defect of its Government". (All quotes taken from the Decision on Admissibility, Chapter "The Law", para. 16).

34. The Government of Turkey submits that each of

these grounds is wrong and that the Commission made a serious error in repeating the words of its earlier decision without appearing to weigh and react to the new arguments which were presented to it.

(i) The text of the Constitution

35. It is to be noted that in fact the Commission expressed no view at all on the wording of the Constitution. It appears to have attached so much importance to the alleged practice under the Constitution (upon which comment will presently be made) that it permitted the practice entirely to override the words. This approach implies that the Commission recognized that the institution of proceedings was inconsistent with the Constitution. Indeed, the Commission said as much in the phrase preceding its reference to the role of practice:

> "even assuming that an inconsistency with the Constitution of Cyprus . . . could be relevant for the validity of applications . . ."

It is unnecessary, therefore, for the Turkish Government to remind the Committee of Ministers in detail of the fundamental departures from the Constitution of 1960 involved in the events of 1963 and thereafter, in the exclusion of Turkish-Cypriot participation from the government of Cyprus and in the assumption of total authority by a single community, the Greek-Cypriot community. This aspect of the given problem

had already been outlined in detail by Turkey in its Memorandum to the Committee of Ministers on the First and Second Greek-Cypriot applications (Doc. CM (77) 117).
New violations have since followed in connection with the dissolution of the Greek-Cypriot House of Representatives and with the elections which were held by the Greek-Cypriots for a new Greek-Cypriot House of Representatives. The lowering of the voting age to 18 on January 16, 1986 was yet another example of such violations.

36. Nowhere in the Constitution of Cyprus is there provision which permits, or, in terms of Cyprus constitutional law, can validate such a fundamental violation of its terms. Nor has the Greek-Cypriot Administration invoked any rule of constitutional interpretation established as part of the customary or unwritten constitutional law of Cyprus which can authorize such a departure or an interpretation which gives it legal effect; and of the non-existence of such a rule there can be no doubt.

To the contrary, Article 182(1) of that Constitution stipulates that certain articles of the Constitution are basic articles and "cannot, in any way, be amended, whether by way of variation, addition or repeal." Those "basic articles" which are set out in Annex III to the Constitution and which have been incorporated from the Zurich Agreement of 11 February 1959, could thus be said to have had the validity

and the force of contractual Rules of International Law, entailing as they do, not only the will of the bi-communal Parliament, but also the sovereign will of Turkey, Greece and the United Kingdom. Yet the Greek-Cypriots have been in perpetual violation of the very Constitution they claim to be still in force, including the violation of its "basic articles".

Furthermore Article 182(3) states that Constitutional Amendments can only be made by a law passed by a majority vote comprising at least two thirds of the total number of the representatives belonging to the Turkish Community. This condition has never been fulfilled in Cyprus ever since the forceable ejection of the Turkish-Cypriots from all institutions of Government in December 1963. This remains to be the case today as the Greek-Cypriots continue to pretend that the 1960 Constitution is still in force.

37. Accordingly, if (contrary to the views of the Government of Turkey) any basis is to be found for treating an act which is unconstitutional under the established written constitution of Cyprus as capable of creating valid legal effects vis-à-vis Turkey, the basis must be found not merely in general international law but in international law which is specifically applicable in relations between the Greek-Cypriot Regime and Turkey or, in other words, which is opposable by the Greek-Cypriot Administration to Turkey.

38. The Commission did not deal with this aspect of the matter expressly, but presumably had this point in mind when it referred to the practice under the Constitution and to certain international legal acts and instruments. Accordingly it is to that aspect of the question that the Government of Turkey has to draw the attention of the Committee of Ministers.

(ii) The irrelevance of "practice under the Constitution of 1960" and especially of certain international legal acts occurring in the course of this practice.

39. The Commission repeated word for word the terms of its decision of 1975. It stated that "regard must be had not only to the text of the Constitution [of 1960] but also to the practice under it especially since 1963"; and went on to observe that a number of international legal acts and instruments drafted in the course of that practice and presented on behalf of the Republic of Cyprus "have been recognized in diplomatic and treaty relations, both by Governments of other States and by organs of international organizations including the Council of Europe".

40. The Government of Turkey is bound to observe that this reasoning fails to take into account the basic consideration that what matters in an application within the framework of the Convention brought in the name of Cyprus against Turkey is not the relationship between Cyprus and

third States or international organizations, but between Cyprus and Turkey.

41. As between Cyprus and Turkey the legal situation is inescapably controlled by the 1960 Treaty of Guarantee - an operative treaty between the two countries. Article I of that Treaty expressly, unambiguously and irrevocably established a treaty umbrella which covers the Basic Articles of the Constitution of Cyprus adopted as part of the 1960 settlement. Whatever attitude States might individually or collectively choose to adopt towards the abandonment by the Greek-Cypriot community of the terms of the 1960 settlement, such other States could not by their individual or collective action alter the content of the legal obligation owed by Cyprus to Turkey. The content of that obligation is clear. It is to act only in accordance with the Constitution of 1960. Conduct which is not in accord therewith cannot be lawfully "opposed" to Turkey. The point is simple and comprehensive. Its legal basis is well-established in the practice of international tribunals.

42. The concept of "inopposabilité" is one which the International Court of Justice and other international tribunals use for the purpose of determining the legal positions of the two parties to a dispute vis-à-vis each other and without reference to the general state of the law or the relations of the parties to other States not involved in the

particular dispute. The concept, therefore, belongs to the same category of ideas as "estoppel" and "preclusion", the operation of wnich also rests on the specific facts of the relationship of one party to the other.

43. One illustration of the use of the concept may be found in the Norwegian Fisheries case (International Court of Justice, Reports 1951, p. 116). The Court there spoke of the ten-mile rule for limiting the length of the closing line of bays as being "inapplicable as against Norway inasmuch as she has always opposed any attempt to apply it to the Norwegian cost". The word "inapplicable" in the English text appears in the French text (which is the authoritative one) as "inopposable" (see p. 131).

44. Later in the same judgment, when dealing with the Norwegian system of using straight base lines for the delimitation of the territorial sea, the Court said - and it may be better to quote from the authoritative French text:

> "La notoriété des faits, la tolérance générale de la communauté internationale, la position de la Grande-Brétagne dans la mer du Nord, son interet propre dans la question, son abstention prolongée, permettraient en tout cas à la Norvège d'opposer son système au Royaume-Uni. (p. 139)"

45. The concept reappears again in the arbitral award between Britain and France relating to the delimitation of the continental shelf in the area of the Channel. At one

point, the Court of Arbitration was considering the effect of the rejection by the United Kingdom of certain French reservations to the Geneva Convention of 1958 on the Continental Shelf. On this, the Court concluded:

> ". . . the effect of the rejection may properly, in the view of the Court of Arbitration, be said to render the reservations non-opposable to the United Kingdom. (Award of 30 June 1977, para. 61, International Law Reports, vol. 54, p. 6, at p. 52.)"

46. But the application of the idea which comes closest to the present situation is to be found in the judgment of the ICJ in the Fisheries Jurisdiction case between Britain and Iceland (ICJ Reports 1974, p. 3). The Court was at the material point in its judgment considering the effect upon British rights of certain Icelandic fishing regulations introduced in 1972. The Court observed that Iceland's unilateral action constituted an infringement of Article 2 of the Geneva Convention of 1958 on the High Seas and also disregarded British rights as they resulted from an Exchange of Notes of 1961. The Court said (at p. 29):

> "Accordingly, the Court is bound to conclude that the Icelandic Regulations of 14 July 1972 establishing a zone of exclusive fisheries jurisdiction extending to 60 nautical miles from baselines around the coast of Iceland, are not opposable to the United Kingdom, and the latter is under no obligation to accept the unilateral termination by Iceland of United Kingdom Fishery rights in the area."

47. These observations are directly applicable to the present case. By parity of reasoning, and following the wording of the ICJ as closely as possible, one must conclude that the Greek-Cypriot measures of the post 1963 period are not opposable to Turkey. The latter is under no obligation to accept the unilateral termination by Cyprus of Turkey's rights under the 1960 treaties and no constitutional position incompatible with those treaty rights can be invoked against Turkey.

48. If the Turkish Government appears to labour this point, it is because despite the fact that it has repeatedly[2/] been made to the Commission, the point has not been specifically considered by the Commission either in the earlier applications or in the present one.

49. The point is one of major importance. By itself it is sufficient to render the Application inadmissible. The

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2/ The point was raised by the Turkish Agent in the 1975 hearings. He then said (at pp. 11-12 of the Verbatim Record) that the Government of Turkey "est fermément convaincu que la qualité de requérant dans le sens de Article 24 de la Convention fait défaut à l'Administration chypriote-grecque et que sa prétendue capacité de representer l'Etat de Chypre lui est en tout état de cause inopposable". The brevity of the Agent's reference to the concept reflected his assumption that it would be as evident to the Commission as it was to the Government of Turkey that the issues raised by the Greek-Cypriot application could not be resolved without reference to the specific character of the relationship existing between them, Cyprus and Turkey, and not between the Greek-Cypriot administration and other States not directly involved in the situation.

failure of the Commission to examine it represents a defect in the Commission's reasoning so fundamental as wholly to vitiate the conclusion reached by the Commission.

(iii) The Correct Procedure for Invoking Article 24 of the Convention

50. The Commission has repeated without change the reference which it made in its 1975 Decision to the relationship between the protection of the rights and freedoms of the people of Cyprus and the suggested unimportance of constitutional defects in its government. In so doing, the Commission has once again misconceived the situation and reached an erroneous conclusion of law.

II. The Lack of Competence of The Commission ratione loci

51. The next principal criticism which the Turkish Government must make of the position of the Commission relates to the question of the competence of the Commission ratione loci. The Government of Turkey has strenuously denied the admissibility of the present Application on the ground that the requirement of Article 1 of the Convention that the protected person be "within the jurisdiction" of the relevant Party has not been satisfied.

52. This argument was presented to the Commission in connection with the 1974 and 1975 applications and was rejected by the Commission in the 1975 Decision. However the

Turkish Government presented further arguments of both a legal and a factual character in the 1978 proceedings - arguments which the Turkish Government felt were sufficiently different from those previously adduced to lead to a change of conclusion by the Commission. However, the Commission rejected these arguments largely on the basis of its 1975 Decision and without giving the arguments the kind of detailed consideration appropriate to a decision of a judicial body. Since the point is one which by itself is sufficient to exclude the competence of the Commission, it is evidently one of some importance. The Government of Turkey will, therefore, restate its principal contentions on the point, commenting as it does so on the unsatisfactory manner in which the Commission has dealt with them.

53. The essence of the Commission's views is stated at paras. 21 and 22, "The Law", of the 1978 Decision in the form of a repetition of what the Commission said in the course of its 1975 Decision:

> ". . . the High Contracting Parties are bound to secure the said rights and freedoms to all persons under their actual authority and responsibility, whether that authority is exercised within their own terrritory or abroad";

and later

> ". . . authorized agents of a State, including diplomatic or consular agents and armed forces, not only remain under its jurisdiction when abroad but bring any

other persons or property 'within the jurisdiction' of that State, to the extent that they exercise authority over such persons or property. Insofar as, by their acts or omissions, they affect such persons or property, the responsibility of the State is engaged".

54. The Government of Turkey contended and contends that the conclusion which the Commission has reached is wrong for the following reasons:

A. Its interpretation of Article 1 runs counter to the travaux préparatoires;

B. Its interpretation of Article 1 is inconsistent with the terms of Article 63 and 65 of the Convention;

C. Practical considerations militate against the intepretation adopted by the Commission.

D. In addition, even if the Commission were right in its interpretation of Article 1, it has failed satisfactorily to apply its own concept of the exercise of authority.

55. Each of these points will now be developed more fully.

A. The Commission's Interpretation Runs Counter to The travaux préparatoires of Article 1.

56. The permissibility of recourse to the travaux préparatories of the Convention as an aid to interpretation is established by the case law of the Commission itself. It

is appropriate, therefore, to draw attention to the fact that the interpretation of Article 1 adopted by the Commission is contradicted by the travaux préparatoires, that this point was fully developed before the Commission in the 1978 arguments and that the Commission made no reference to the point in its decision. In consequence, the Commission has not only reached a substantively wrong conclusion - it has also failed to act judicially.

57. The text of the first draft of the Convention referred to "all persons within the territory" of a Party (see Article 1 of the Draft European Convention on Human Rights submitted by the European Movement to the Committee of Ministers of the Council of Europe in July 1949). Proposals were then adopted in the Legal Committee (September 8, 1949) to extend this concept to cover all persons residing within the overseas as well as the metropolitan territories of the Parties. The question arose whether the protection of the Convention would extend to nationals of non-member countries (See Preparatory Report by the Secretariat General of the Council of Europe). Subsequently, in February 1950, a Sub-Committee rejected a proposal that the words "residing within" should be replaced by the words "living in" on the ground that the latter "might give rise to a certain ambiguity". Instead, the Sub-Committee suggested that the words "residing within" should be replaced by the words

"within its jurisdiction". There was no suggestion made at that time that this amendment was intended to extend the protection of the Convention to persons outside the territory of a Party who came into some contact abroad with the authorities of that Party.

58. The development was summarized in the Preliminary draft report of the Committee of experts to the Committee of Ministers of February 24, 1950. In commenting on Article 1 the Committee said:

> "The Assembly draft had extended the benefits of the Convention to 'all persons residing within the territories of the signatory States'. It seemed to the Committee that the term 'residing' might be considered too restrictive. It was felt that there were good grounds for extending the benefits of the Convention to all persons in the territories of the signatory States, even those who could not be considered as residing there in the legal sense of the word. This word, moreover, has not the same meaning in all national laws. The Committee therefore replaced the term 'residing' by the words 'within their jurisdiction', which are also contained in Article 2 of the Draft Covenant of the UN Commission" (emphasis supplied).

This statement in the Draft Report of the Committee of Experts was incorporated verbatim in their Report of 16 March 1950.

59. Some months later, Henri Rolin - the distinguished Belgian lawyer who had been closely involved in the development of the draft - indicated in the Second Session of

the Consultative Assembly (Plenary meeting on August 25, 1950) his own understanding of Article 1 in the following words:

> ". . . henceforth, the right of protection by our States, by virtue of a formal clause of the Convention, may be exercised with full force, and without any differentiation or distinction, in favour of individuals of whatever nationality, who on the territory of any one of our States, may have had reason to contemplate that his rights have been violated" (emphasis supplied).

60. The context in which this statement was made was one in which Professor Rolin was identifying "three almost revolutionary reforms" which the Convention was making. If he had thought that it was going so far as to enable its protection to run extraterritorially along the link of any administrative extension of the authority of a Party, it is unlikely that he would have failed to note that feature as another "revolutionary reform".

61. In short, the travaux préparatoires of the Convention clearly indicate that the interpretation adopted by the Commission is wrong. The expression "within their jurisdiction" was evidently intended to refer to the territory of each Party and not to conduct in any foreign territory not subject to the sovereignty of that Party.

B. Inconsistency Of The Commission's Position with Articles 63 and 65 of the Convention

62. In addition to the lack of accord between the Commission's interpretation and the travaux préparatoires of the Convention, it is necessary to emphasize the inconsistency of the Commission's interpretation with other relevant parts of the text of the Convention itself - namely, Articles 63 and 65.

63. Once again, this argument, which was developed fully before the Commission, finds no reflection in the Decision of the Commission.

(i) Article 63

64. Article 63 contains four operative paragraphs. The first contemplates that a Party may make declarations extending the Convention to territories for the international relations of which it is responsible. The second specifies the speed with which such notification shall operate. The third permits the modification by a Party of its Convention obligations in order to pay due regard to local requirements. The fourth paragraph permits the extension of the right of individual petition to any such territories.

65. It is an elementary principle of treaty interpretation, reflected now in Article 31 of the Vienna Convention of the Law of Treaties, that a treaty shall be interpreted in accordance with the ordinary meaning to be given to

its terms in their context and in the light of their object and purpose. This means, of course, that the treaty must be read as a whole so that its parts are mutually consistent with one another.

66. If the Convention is approached in this way, it is evident that the interpretation placed by the Commission upon "jurisdiction" in Article 1 would make the first two paragraphs of Article 63 quite unnecessary. Upon that interpretation, it is clear that persons within a territory for whose international relations it is responsible, and which, in usual circumstances, it would be administering, would be persons "within the jurisdiction" of that Party. Accordingly, the terms of the Convention would apply in such territories even if no declaration were made under Article 63(1) and (2). The Commission does not escape from the problem of the redundancy of paragraphs 1 and 2 of Article 63 by the sentence which appears in paragaph 9 of "The Law" in the 1975 Decision on the two previous applications in these terms:

> "The purpose of Article 63 is not only the territorial extension of the Convention but its adaptation to the measures of self-government attained in particular non-metropolitan territories and to the cultural and social differences in such territories."

Even as an explanation - although questionable[3/] of the

3/ With the above-mentioned quotation from the Report, the Commission has added to Article 63(3) a number of FOOTNOTE CONTINUED ON NEXT PAGE.

presence of the third paragraph of Article 63, it does not explain the presence of the first two paragraphs. On the other hand, once the concept of "jurisdiction" in Article 1 is given its proper, narrower, meaning, then the whole of Article 63 falls properly into place.

(ii) Article 65

67. An argument similar to the one based on Article 63 was also addressed to the Commission in connection with Article 65(4). This is the final paragraph of the denunciation article. It provides that

> "the Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 63".

However, if the Commission is correct in its extended interpretation of the concept of "jurisdiction", a Party continuing to exercise any degree of administrative power in a territory in respect of which it had given notice of denunciation would still remain bound to secure the application of the Convention there. That is evidently not the intention of the Convention and suggests that the interpretation of the Commission is wrong.

FOOTNOTE CONTINUED FROM PREVIOUS PAGE.
criteria which do not have any foundation in that provision, such as "self-government", "particular territories" or "cultural and social differences".

C. Practical Considerations Which Militate Against the Position of the Commission

68. The error of the interpretation placed by the Commission on the concept of "jurisdiction" in Article 1 becomes even more evident when one looks at the matter in specific practical terms. The Commission stated in the 1975 Decision that "authorized agents of a State, including diplomatic or consular agents and armed forces, not only remain under its jurisdiction when abroad, but bring any other persons or property 'within the jurisdiction' of that State, to the extent that they exercise authority over such persons or property" 4/ The Commission cited that passage in the 1978 Decision 5/ and evidently regards it as correct in law and as a sufficient basis for treating those who are alleged to have been the victims of violations of human rights in Northern Cyprus as within the jurisdiction of Turkey.

69. However, as was submitted to the Commission, but was not the subject of any consideration by it in the course of the 1978 Decision, the proposition that persons are brought "within the jurisdiction" of a State to the extent that the authorized agents of the State are operating within the area where they are, involves a significant, unexpected

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4/ p. 136, § 8.

5/ p. 151, § 20.

and probably unacceptable extension of the obligation of Parties to the Convention. For wherever a Party through its agents - its armed forces or even its diplomatic service - finds itself in some relationship abroad with an individual, the latter is entitled - so it would seem - to require of those agents treatment in accordance with the Convention.

70. The point is sufficiently striking to warrant some elaboration - particularly since, yet again, the Commission has completely ignored it in its Decision.

71. A number of Parties to the Convention from time to time provide armed forces for the performance of peacekeeping or comparable services abroad. As good an illustration as any is UNFICYP - the UN Peacekeeping Force in Cyprus. Of the States contributing military personnel to this force, no less than five are Parties to the Convention - Austria, Denmark, Ireland, Sweden and the UK. Each of these Parties has accepted the individual right of petition. If the Commission is correct in its view that armed forces bring other persons or property within the jurisdiction of their State to the extent that those forces operate within the area where such persons or property are, then it is necessary to recognize that there may well be situations in which the conduct of forces engaged in a UN peacekeeping activity might be brought within the scope of the Convention. This possibility is not disposed of by saying that UN forces operate

under the responsibility of the UN and thus represent an extension of UN jurisdiction, not of the jurisdiction of the State contributing the contingent. For such a statement would only be partly correct. True, in accordance with the general pattern of UN peacekeeping operations, the commander of such a force has general responsibility for the good order of the force, while the force itself may even be a subsidiary organ of the UN. But in every case responsibility for disciplinary action in national contingents rests with the commanders of the national contingents.

72. In the case of UNFICYP, paragraph 11 of the agreement between the UN and the Greek-Cypriot administration provides expressly that

> "Members of the Force shall be subject to the exclusive jurisdiction of their respective national States in respect of any criminal offenses which may be committed by them in Cyprus".

Since virtually all of the acts alleged in the Application as amounting to breaches of the Convention are acts which would normally be regarded as criminal, it appears that if such acts were committed by members of UNFICYP they would be a matter of national, not UN, jurisdiction. Furthermore, according to the view of "jurisdiction" taken by the Commission, the States contributing the contingents could be held responsible for breaches of the Convention.

73. Thus an entirely new dimension is introduced

into UN peacekeeping - a dimension in which there is a difference in the range of liability which a State contributing a contingent may incur, according to whether it is a Party to the Convention and to whether it has accepted the individual right of petition.

74. Much the same can be said of any other act committed abroad by the armed forces of a Party to the Convention. Thus when members of the armed forces of the Federal Republic of Germany landed at Mogadishu in Somalia to release passengers hijacked by terrorists, they carried with them the provisions of the Convention - provisions which could in certain conceivable circumstances have been invoked by the terrorists. Likewise, when contingents from France and Belgium intervened for humanitarian purposes in Zaire in 1978, they exposed their Governments to the possible invocation against them of the Convention. Again, putting the proposition in the form of a question, to what extent did British, French and Italian troops, as participants in the multinational force in the Lebanon in 1983/84, carry the European Convention on Human Rights to Beirut? And is it consistent with the concept of uniformity of the application of the Convention that Lebanese civilians within areas patrolled by those forces would, but persons within the area patrolled by the United States contingent would not, enjoy the protection of the Convention? The fact that the pros-

pects of such invocation may be remote, or that there may be good substantive defenses to what may in any event be wild or exaggerated charges, does not diminish the theoretical implications of the Commission's interpretation of "jurisdiction" in Article 1. These implications appear to be quite outside the range of expectation of the Parties to the Convention and, for that reason amongst others, suggest that the interpretation is wrong and requires reconsideration.

D. Failure of the Commission Satisfactorily to Apply its Own Concept of the Exercise of Authority

75. In addition to the error in interpretation identified in the preceding sections, it is necessary to observe that even in terms of its own interpretation the Commission has failed to apply the concept of "jurisdiction" properly.

76. The Commission has emphasized that persons and property are within the jurisdiction of a Party to the extent that that party's authorized agents exercise authority over such persons or property. There is, therefore, nothing self-evident about a person or property being within the jurisdiction of a Party. The fact that an agent of a Party and a person or an item of property may be in the same place does not by itself establish that that person or piece of property is the subject of an exercise of authority by the agent suffi-

cient to bring that person or property within the jurisdiction of the Party. Each case must evidently turn on its facts.

77. It was, therefore, to be expected that before the Commission concluded that the persons and property in respect of whom the Application was made fell within "the jurisdiction" of Turkey, the Commission would have examined the situation in some detail. Instead, the Commission merely reasserted in general terms that by virtue of the presence of Turkish troops in the north of the Republic of Cyprus, Turkey's "jurisdiction" existed there and is not excluded on the ground that jurisdiction in the area was allegedly exercised by the Turkish Federated State of Cyprus (TFSC) 6/

78. Moreover, by ending this section of its Decision with a statement that "this conclusion does not prejudge the imputability to Turkey of any particular violation of the Convention which may be established in an examination of the merits of this question", the Commission in effect decided that the question of whether the requirements of Article 1 of the Convention are satisfied is not one of admissibility.

79. In order to appreciate the rather extraordinary character of the position adopted by the Commission, it is

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6/ See 1978 Decision, pp. 151-152, §§ 23 to 25. The Turkish Federated State of Cyprus is the predecessor of the Turkish Republic of Northern Cyprus.

necessary to examine closely the meaning of the word "authority" as used in the phrase "to the extent that they exercise authority over such persons or property".

80. Two situations must be distinguished. The first is where there is only one possible "authority". The second is where there may be more than one.

81. Where there is only one possible authority in an area, one may assume that it possesses the plenitude of sovereign or governmental power. Accordingly, everything done within the area under its control prima facie falls within its authority or "jurisdiction". That is the case of Turkish authority within Turkey as it is also the case of the Greek-Cypriot authorities in the southern part of Cyprus. It was also the case of the authority of the Turkish Federated State of Cyprus (TFSC) in northern Cyprus. But it was not the case of Turkish forces within the territory of the TFSC. It was not the case in 1975; and it certainly was not the case in 1978 let alone today. As will presently be emphasized the Turkish forces were not the "one possible authority" in northern Cyprus.

82. The second situation is where there might be more than one "authority" with a given territory. In that case, for the purpose of determining who has "jurisdiction" in terms of Article 1 of the Convention, it becomes necessary to scrutinize very closely which body exercises authority; in

which places; for what purpose; and subject to what conditions. But in its 1975 Decision on admissibility, the Commission did not carry out this kind of scrutiny. It did not attempt to determine what might be the limits of the competence of each. In the last section of paragraph 10 of "The Law" in the 1975 Decision, the Commission, after observing that Turkish armed forces had entered Cyprus and operated there solely under the direction of the Government of Turkey, concluded that the Turkish armed forces brought "any other persons or property in Cyprus 'within the jurisdiction' of Turkey, in the sense of Art. 1 of the Convention, to the extent that they exercise control over such persons or property". The same position was adopted in the 1978 Decision.

83. Thus, the Commission conceded that "jurisdiction" depended upon "extent of control". But neither the 1975 nor the 1978 Decision reflects any analysis at the admissibility stage of the extent of Turkish control. The Government of Turkey submits that this is wrong, and this even more so if one recalls that at the time of the decision the Commission was aware of the existence of the Geneva Declaration of 30 July 1974 - an international instrument subscribed to by the foreign Ministers of Greece, Turkey and the UK. This declaration stated, inter alia, that

> "The Ministers noted the existence in practice in the Republic of Cyprus of two autonomous administrations, that of the

Greek-Cypriot community and that of the Turkish-Cypriot community".

In 1978, however, the trend of development in the TFSC which was already identifiable in 1975 - but which the Commission did not then identify - had advanced considerably and it was quite wrong for the Commission to reach the same conclusion in 1978 as it did in 1975 regarding the question of jurisdiction in northern Cyprus.

84. In the course of argument before the Commission in July 1978, the Government of Turkey presented the Commission with detailed material showing that Turkey did not in any respect specifically relevant to the Application exercise jurisdiction in the area affected by the Application. Before commenting on the inadequate way in which the Commission dealt with this submission it will perhaps be convenient to indicate more fully the nature of the submissions made by Turkey in this connection.

85. The Government of Turkey, though not denying the presence of Turkish forces in northern Cyprus, stated that these forces were present there at the request and with the consent of the ruling authority of the relevant area - the TFSC. The reality of the existence of the TFSC was thus put in issue. The Government of Turkey asserted that there existed in northern Cyprus a genuine local administration, within whose "jurisdiction" fell persons and property within that area. This was not a figment of the imagination of the

Turkish Government, as is shown by the Declaration of 30 July 1974 made by the Foreign Ministers of Greece, Turkey and the United Kingdom mentioned in paragraph 83 above, as well as by the analysis of the situation in the judgment of Lord Denning, MR in the English Court of Appeal in the case of Hesperides Hotels v. Aegean Turkish Holidays [1978] 1 All ER 277, at pp. 283-4. This analysis remains unaffected by the subsequent proceedings in this case in the House of Lords.

86. Yet, despite the detail with which the matter was developed before the Commission at its hearings in July 1978, the Commission entirely failed to grapple with the point. This was not because the Commission considered that decisions on questions of fact were beyond its competence. As is clear from para. 23 of the 1978 Decision ("The Law"), the Commission was prepared - on the basis of no discussion of any evidence - to adopt a firm conclusion that at that date "the restriction on the actual exercise of jurisdiction by the applicant Government, as the Government of the Republic of Cyprus, [was] due to the presence of Turkish armed forces in the north of the island". It would seem that the Commission did not consider the possibility that, in contradiction to 1974, the position in 1978 might be that the real restriction on the exercise of jurisdiction by the applicant Government in the north of Cyprus might be the

crystallization there of an autonomous local civilian administration - the TFSC. (In fact, in 1983, the TFSC became an independent State, the Turkish Republic of Northern Cyprus , exercising full jurisdiction and sovereignty in the north of the island, and Turkey has recognized this independent State.)

87. The shortcomings of the Commission's Decision in this respect are serious - both as a matter of procedure and substance. To appreciate how serious, it is necessary to recall the manner in which the Government of Turkey submitted to the Commission the material relevant to the exercise of authority and jurisdiction in northern Cyprus.

(i) The "negative" development

88. First, the Government of Turkey expounded the situation in "negative" terms, that is, by denying that it exercised in the relevant area at the material time a degree of authority commensurate with the automatic or wholesale attribution to Turkey of responsibility for alleged continuing breaches of the Convention.

89. As is true of any negative proposition, proof is always difficult. Accordingly, the Government of Turkey concluded that, beyond the making of one specific point, the development of its position should rest on the positive argument.

90. The specific point which seemed worth making

related to the allegations of looting. It provided a convenient and precise illustration of the way in which the effect of the presence in northern Cyprus of Turkish forces could be misrepresented. This allegation was particularized in a noticeably loose way in paragraph 29 of the Particulars of 1 November 1977 in the words

> "Looting by or with the support of the Turkish troops of appreciable quantities of commercial commodities and other movable properties from Greek Cypriots who owned business houses and other premises in the Turkish occupied areas, especially in the Famagusta area, has continued".

In wording which is noticeably similar, a reference to the same matter appeared in the report of the Secretary-General of the UN (S/12723, 31 May 1978, para, 24):

> "Appreciable quantities of commercial commodities and other movable properties have been taken from houses and other premises in the new town of Famagusta (Varosha) during the period under review, giving rise to complaints of looting. The Turkish Cypriot authorities have indicated to UNFICYP that records are being kept and that certain properties already taken will be accounted for in the event of a political settlement."

91. Although it has not been possible to ascertain why the Secretary-General's report follows so closely the wording of the Particulars, two points were drawn to the attention of the Commission.

92. The first was that the Secretary-General's

Report did not attribute the looting to Turkish forces. The second is that the Report expressly referred to dealings by UNFICYP on the matter with "the Turkish Cypriot authorities". There is no reference to the involvement of the Turkish forces in any form whatsoever.

93. Thus, taking the above example as an illustration, it is clear that the mere presence of Turkish forces in northern Cyprus cannot loosely be presented as the basis for attributing responsibility to them for any and all acts which are alleged to constitute breaches of the Convention. Yet the Commission did not touch upon this argument at all and adhered instead to a point of view expressed three years earlier in relation to facts which could not be assumed to have remained unchanged over the ensuing period and which, indeed, had not remained unchanged. The Commission repeated this error in its 1983 Report when it concluded, after the briefest possible consideration of the question, that acts of the Turkish Federated State of Cyprus were to be regarded as imputable to Turkey 7/

(ii) The "positive" development

94. The submission that all governmental authority relevant to the claimed continuation of the alleged breaches of the Convention rested with the TFSC and not with

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7/ 1983 Opinion, p. 16, §§ 63 & 64. See also paragraph 99, below.

the Turkish forces was also developed in a positive manner - by a full demonstration for the extent of TFSC authority in the area. This demonstration took the form of an exposition by Mr. Justice Ertekun, Legal Adviser of the Turkish-Cypriot Interlocutor in the Intercommunal talks and formerly the President of the Supreme Court of the TFSC, who, on the basis of his special knowledge of the situation was able to set out the position clearly, fully and authoritatively.

95. In his statement Mr. Ertekun provided the Commission with a precise indication of the existence and scope of substantial Turkish Cypriot authority in northern Cyprus under the name of the TFSC. At the very least this required of the Commission some consideration of where effective authority in this area lay. The important information provided by Mr. Ertekun was completely and wrongly ignored by the Commission.

96. To none of the details given by Mr. Ertekun did the Commission refer. It was as if the argument had not been presented and as if there had been no development of governmental power in the hands of the TFSC since 1975. Instead the Commission said this:

> "It is bound to observe, however, . . . [1] that one High Contracting Party, namely Cyprus, has since 1974 been prevented from exercising its jurisdiction in the northern part of its territory by the presence there of armed forces of another High Contracting Party, namely Turkey; [2] that the recogni-

> tion by Turkey of the Turkish-Cypriot administration in that area as 'Turkish Federated State of Cyprus' does not, according to the respondent Government's own submissions, affect the continuing existence of the Republic of Cyprus as a single State and High Contracting Party to the Convention; and [3] that, consequently, the 'Turkish Federated State of Cyprus' cannot be regarded as an entity which exercises 'jurisdiction', within the meaning of Article 1 of the Convention, over any part of Cyprus."

97. As to the first of these observations, the Government of Turkey has already commented that the observation states a conclusion about the role of Turkish forces which is evidently reached without any consideration having been given to the emergence of the TFSC and the fact that it - as an effective civilian administration - rather than Turkish forces, might be the effective inhibition on the exercise of jurisdiction in the north of Cyprus by the Greek-Cypriot regime.

98. As to the second observation, that was only ever true in part. It was a fact that in 1978 the TFSC still regarded itself as the prospective Turkish-Cypriot element in a reunited federal State of Cyprus. However, until the achievement of that reunion, the TFSC functioned as an entity independent of the Republic Cyprus as administered by the Greek-Cypriot regime. In addition, and no less to the point, the TFSC regarded itself as being by succession a separate party to the European Convention on Human Rights and as the

appropriate body to receive complaints relating to the non-observance of the Convention in northern Cyprus. This was expressly stated to the Commission in the course of oral argument on 6 July 1978.

99. That the TFSC, like its successor functioned as an independent entity, separate from the Greek-Cypriot Administration, is attested by the fact that UNFICYP has from the very beginning been mandated by the Turkish-Cypriot authorities.

In addition, the UN-Secretary General in his official reports to the Security Council has always, besides Turkey, Greece, the United Kingdom and the Greek-Cypriot side, listed the Turkish-Cypriot side as the parties whose consent has been sought by the United Nations for the extension of UNFICYP'S mandate. The practice continues after the proclamation of the Turkish Republic of Northern Cyprus.

Above and beyond the cognizance by the United Nations of the existence of a separate, and at first autonomous now independent Turkish-Cypriot Authority in Cyprus, a considerable number of States have regular contacts with the Turkish-Cypriot authorities. Some even maintain a presence on the Turkish Cypriot side in order to conduct business. Most important of all, the Greek-Cypriots have always accepted the Turkish-Cypriot side as a counter-part in the negotiations for a Cyprus settlement and the two sides have

made several agreements including the 1979 Denktas-Kyprianou high level agreements.

These facts prove beyond any legitimate doubt that there existed in North Cyprus and there continues to exist a fully competent and now fully sovereign Turkish-Cypriot Authority which has exclusive jurisdiction and control over its territory, bearing complete responsibility over its affairs.

100. As to the third observation made by the Commission in the above-quoted portion of its decision, despite its introduction by the word "consequently" it is in truth a complete non-sequitur. What is there in either of the first two observations which logically leads to the conclusion that the TFSC "could not be regarded as an entity which exercises 'jurisdiction' within the meaning of Article 1 of the Convention over any part of Cyprus."? In the absence of discussion and of rejection of the evidence relating to the existence of the TFSC, it cannot be said that the mere presence of Turkish forces in northern Cyprus meant the TFSC did not exercise jurisdiction there. Nor does the fact that Turkey recognized the unified personality of a single State of Cyprus, though not the Greek-Cypriot regime as the government thereof, have any relevance to the question of whether the TFSC exercised "jurisdiction" in the northern part of Cyprus.

III. As to the Exhaustion of Domestic Remedies and the Observance of the Six Months' Rule

101. The Government of Turkey has already dealt with the two major respects in which the Commission has erred: the questions of locus standi and of "jurisdiction". On each of these two grounds the Commission should have decided that the Application was inadmissible; and either would have been a sufficient ground on which to terminate the proceedings.

102. There remain, however, four further pleas to the admissibility of the Application which have been rejected by the Commission.

103. The first of these is the contention that domestic remedies have not been exhausted as required by Article 26 of the Convention. As to this, the Government of Turkey would merely note - as a reflection of the nature of the Commission's approach to its task - that despite the remarkedly subordinate place which the Turkish Government accorded to this plea in its oral argument, the Commission devoted to the matter almost as much space as it did to both the major pleas of the Government of Turkey. This might not matter much if those considerations of the major pleas had been full and persuasive. But the superficiality and inadequacy of the treatment of the first two pleas is emphasized by the treatment by the Commission at such length of the relatively unimportant non-exhaustion of domestic

remedies.

104. At the same time, the Government of Turkey feels that one paragraph in particular in the discussion of local remedies calls for identification as an illustration of the casual and over-generalized manner in which the Commission has approached this matter.

105. The Commission referred to the material presented by the Government of Turkey as regards the availability of remedies in the legal system of the TFSC (see 1978 Decision, "The Law", para. 35). In the next paragraph (para. 36), the Commission said:

> ". . . the overwhelming majority of Greek Cypriots, whose rights and freedoms under the Convention are alleged to have been violated, are at present resident in the southern part of Cyprus controlled by the applicant Government and are not permitted to enter the northern part of the Republic which . . . has since 1974 been under the respondent Government's jurisdiction. In these circumstances, any remedies which might be said to be available to such Greek Cypriots in the northern area cannot on principle be considered as 'practicable'."

106. The Government of Turkey has the following comments to make on this paragraph:

(i) The task of the Commission is to deal with complaints of breaches of human rights affecting particular identifiable individuals, not a generalized mass of persons. The admissibility of any application must, therefore, be

tested by reference to the circumstances of the specific individuals whose rights are said to have been violated. It is, therefore, quite inappropriate for the Commission to speak of an "overwhelming majority" of Greek Cypriots whose rights are alleged to have been violated. If an application asserting multiple violations of the Convention is to be held admissible, it must be admissible in all respects and not simply in a majority of cases.

(ii) The same considerations suggest that it is equally inappropriate for the Commission to hold that "remedies which might be said to be available . . . cannot on principle be considered as 'practicable'" (emphasis added). In a situation where the Commission has to pass on particular cases by reference to the evidence which is at hand, the Commission is not entitled to resort to generalities of the kind reflected in the use of the words "on principle".

(iii) The Commission asserts that northern Cyprus "has since 1974 been under the respondent Government's jurisdiction". As already stated by the Government of Turkey, this is not the case. The mere presence of Turkish troops in northern Cyprus does not place that area within the jurisdiction of Turkey - at any rate when there exists, as there does, clear evidence of the exercise of jurisdiction by the authorities of the TFSC. Moreover, this mode of expression runs counter to the Commission's own stated view that the

existence of jurisdiction in a situation of this kind is related specifically to "the extent that authorized agents of the State exercise jurisdiction over person or property".

IV. As to the Objection that the Present Application is the Same as Applications Nos. 6780/74 and 6590/75

107. In its written Observations the Government of Turkey contended that the present application is inadmissible because it is substantially the same as that brought before the Commission in two earlier applications. That submission was developed carefully in oral argument. The Commission summarily dismissed the submission in a manner which is open to major criticism on both procedural and substantive grounds.

108. As to procedure, it is perhaps hardly necessary to do more than compare the Commission's purported restatement of one of the Turkish Government's contentions with what was actually said on behalf of the Turkish Government. At §§ 48-49 of the 1978 Decision the Commission states:

> "The respondent Government in this respect rely on the 'well-established general legal principle that no-one can be tried twice on the same charge' and on the Commission's case-law under Article 27 para. 1(b) of the Convention . . . . . The Commission, having regard to the clear terms of Article 27 para. 1(b) cannot find that it is authorized under the Convention to declare inadmissible an application filed under Article 24 by a High Contracting Party on the ground that it is substantially the same as a previous inter-State application."

What was actually said on behalf of the Turkish Government - as is to be seen in the Verbatim Record, Day One, page 50 - was this:

> ". . . I should make it plain that the Government of Turkey is not relying on the provision in Article 27 1(b) of the Convention as such . . . we rely instead upon a broader principle - of which Art. 27 is, however, one reflection. This broader principle rests upon basic considerations of sound judicial conduct." (The word "not" is underlined even in the Verbatim Record.)

109. The discrepancy between the Commission's statement of the argument and the true terms in which it was expressed is serious enough in itself. But it is evident that when an argument is mis-stated by a tribunal, judicial consideration of it is unavoidably distorted and erroneous. The Government of Turkey expressly disclaimed reliance on Article 27 1(b); the Commission prefaces its own views of the matter by saying "having regard to the clear terms of Article 27 par. (1)(b)". Since, as the Commission itself says, Article 27 deals only with individual petitions, the Turkish Government is at a loss to understand how the clear terms of Article 27 can dispose of an argument which was expressly and deliberately not founded upon that Article.

110. On turning to the substance of the Commission's decision, it is to be noted that the Commission disposes in

one line of an argument which engaged in the oral pleadings not less than 4 closely typed pages (pp. 53-57) of detailed comparison of the present application with those previously before the Commisson and the Committee of Ministers: "In any event" said the Commission, "the present application is not identical with the previous cases". The Turkish Government will not repeat here the detailed comparison of the applications which is referred to above. Suffice it perhaps to quote from the concluding remarks addressed to the Commission on this point:

> ". . . the complaints of breaches of Art. 8 of the Convention and of Art. 1 of the first Protocol arise out of identically the same facts as those already investigated. They are both in form and in substance allegations of a continuing state of affairs and provide no new or additional material which would properly form the subject of a further inquiry by the Commission (Verbatim Record, Day One. p 56).

111. In the view of the Turkish Government there remains substantial merit in its contention that the system of the European Convention on Human rights precludes the Commission from considering an application which in substance and in essence contains allegations which are the same as those previously considered by the Commission.

112. The importance of the point becomes the clearer when it is recalled that the earlier applications had been considered not only by the Commission but also by the Commit-

tee of Ministers. This last aspect of the matter was developed by the Government of Turkey in detail in the oral pleadings as part of its plea that the present application is a duplication of applications which have already been through the procedures contemplated by the convention and, in particular, examination by the Committee of Ministers. The Commission, however, dealt separately with the question of the effect of the Committee of Ministers' decision - a matter to which the present memorandum now turns.

V. As to whether the Commission is precluded from dealing with the present Application by the Committee of Ministers' decision of 21 October 1977

113. The Government of Turkey contended before the Commission that

> ". . . the application is inadmissible because there has already been a decision of the Committee of Ministers. This excludes further consideration of allegations which have the same origin as, and are substantively similar to, those already the subject of that decision". (See Verbatim Record, Day One, p. 57.)

After commenting on the principal elements of the Decision of the Committee of Ministers, the Government of Turkey said:

> ". . . the long and the short of the matter is that the decision of the Committee of Ministers either disposes of this matter or it does not. But whichever way one looks at it, the matter is now outside the jurisdiction of the Commission. To the extent that the decision disposes of the matter, it is settled; and for that reason beyond the jurisdiction of the Commission. To the

> extent that the decision does not dispose of the matter, the Committee of Ministers still remains seized of it, and for that reason the matter is outside the jurisdiction of the Commission". (Verbatim Record, Day One, p. 60.)

114. The Commission dealt with the point briefly by saying, first, that the Decision of the Committee of Minister "does not indicate any position taken by the Committee of Ministers as regards the present application". (para. 51). The Commission then went on to refer to its decision on admissibility in the first Greek Case as authority for the proposition that it is "'limited to a consideration of the substance of the case file before it and thus acts in complete independence' as regards any other body". (para. 52).

115. As to the first point made by the Commission, it is of course true as a statement of fact. But stating that fact does not resolve the question of whether, when the Committee of Ministers has acted as it has in relation to the first applications, which in substance are so much like the present one, it is right for the Commission to consider the present application.

116. So the question is whether the manner in which the second - and only other - point made by the Commission is sufficient to resolve the question. In the view of the Government of Turkey, it clearly is not. The Commission asserts

for itself not an independence but an isolation which completely distorts its role in the implementation procedures contemplated by the Convention. For one thing, the reference to the First Greek Case is quite irrelevant. The question there involved the role of the Consultative Assembly - as to which the Commission then rightly said "that the Consultative Assembly has no competence to deal with applications alleging violations of the Convention". (Collection of Decisions, vol. 25, p. 114.) In the present case, on the other hand, the question is one of the role of the Committee of Ministers - an entirely different matter. Unlike the Consultative Assembly, to which no part is allotted in the implementation procedures of the Convention, the Committee of Ministers is given a specific role. Under Articles 30 and 31 the Committee of Ministers is expressly made the recipient of the Reports of the Commission mentioned in those articles. Under Article 32 the Committee of Ministers must in certain circumstances decide whether there has been a violation of the Convention. Any likening of the position of the Committee of Ministers to the positon of the Consultative Assembly as regards the implementation procedures of the Convention is completely misconceived. The Commission is not entitled to pretend that its "independence" relieves it of the necessity to give appropriate weight to the consideration of a matter by the Committee of Ministers anymore than it

would be entitled to pretend that the disposition of a matter by the European Court of Human Rights could have no relevance to the consideration of a similar or related matter by the Commission.

117. In this connection, there is an interesting additional point to be mentioned which throws a disturbing light on the approach taken by the Commission in this case and in particular with regard to the argument as to the "relevance" to the case of the 1977 decision of the Minister Deputies.

Before turning to this point, it should be recalled that the 1977 decision was later integrated in the Resolution DH (79) 1 also taken by the Ministers' Deputies.

Now then, what has the Commission done concerning the relevance of these decisions taken by the Committee of Ministers for the present case?

In reply to the Turkish argument asserting such a relevance, the Commission stated in the 1978 Decision its complete independence as regards any other body, and thus as regards the Committee of Ministers.

But when we now look at the report of the Commission, we discover a completely opposite stance of the Commission to its earlier pronouncements, this time however in order to justify the acceptance of an argument made by the Greek-Cypriot Administration. Reference is being made here to

paragraph 62 of the 1983 Report where the Commission specifically noted the terms of Resolution DH(79)1 of the Committee of Ministers.

This "double standard" approach by the Commission seriously put into question its legal reasoning in this particular case.

VI. As to whether the application is abusive

118. The rejection by the Commission of the submission by the Turkish Government that the application is abusive calls for a brief comment. The Commission's conclusion on this point can be valid only if one accepts all its previous conclusions. But once it is shown that the Commission's rejection of the other pleas to admissibility raised by the Government of Turkey is wrong, then the question of abuse becomes once again highly material. Essentially, the abuse of the process of the Convention rests in the following matters:

(i) The making of allegations which are not particularized;

(ii) The provision, in those cases where particulars are attempted, of only vague and unspecific particulars;

(iii) The duplication of procedures involved in the present application and the impossibility of the applicant securing from the procedures of the convention anything

more than is already covered by the decision of the Committee of Ministers of October 1977;

(iv) The role of the application as part of a pattern of political propaganda directed against Turkey.

119. To conclude this chapter on the admissibility decision, for reasons which are not sustainable the Commission has either totally disregarded or distorted valid pleas by Turkey or has rejected them without convincing legal reasoning.

IV.

Legal Observations On The Opinion Expressed By the Commission in Its Report

120. The Report of the Commission as to the merits is striking on two accounts: (i) by reason of the identity of the issues examined with those arising out of the First and Second Application (Nos. 6780/75 and 6950/75) of the Greek-Cypriot Administration and (ii) because of the surprisingly superficial and therefore totally unconvincing treatment of evidence by the Commission.

121. Before turning to the merits of the specific allegations, as seen by the Commission, it seems appropriate to comment shortly on two of the issues discussed in Part I of the report under the heading "General", namely (i) the refusal of Turkey to participate in the proceedings (§§ 48-53 of the Report) and (ii) the question of the essential identity of the third application with the two first applications.

122. As to the first issue, the Commission simply quotes its opinion as expressed in the Interim Report of July 12, 1980. In the last paragraph of this quotation, the Commission blamed Turkey for not having participated in the proceedings before the Commission as to the merits because of her refusal to recognize that the applicant had a right to bring an action against Turkey (see §§ 18 to 50 above), while

having at the same time accepted to participate in the proceedings before the Committee of Minister on Applications No. 6780/74 and 6950/75. The Commission believed to detect here an unconsistant stance by Turkey, because it added: "Those proceedings were, like the present one, governed by the Convention."

The Government of Turkey is surprised to be confronted with such a statement which obviously is not supported at all by the legal situation governing the Commission and the Committee of Ministers (Art. 32) respectively.

As recalled in §§ 21(iv) and 31 above, the proceedings before the Commission in the context of Article 28 are entirely different from the principles governing the Committee of Ministers in its procedure under Article 32. While the procedure under Article 28 of the Convention is adversary in nature and thus implies a party versus party argument, or eventually party to party contacts for a settlement, there is nothing comparable in the Article 32 context.

In particular, Article 32 does not contemplate adversary proceedings ("procédure contentieuse") before the Committee of Ministers which, although entrusted with special decision-making power remains a political body in which all members have an equal status. The Commission should have known this important point of fact and of law. Simply to affirm that both proceedings "were governed by the

Convention" is no valid argument at all. It only denotes the superficial way the Commission followed in establishing its Report.

123. Concerning the responsibility of Turkey, under the Convention, for act or omissions in the exercise of jurisdiction" in Northern Cyprus, the Commission had already rejected a proposal made by Turkey at the admissibility stage to have the fact established by a visit to Northern Cyprus at the invitation by the President of the TFSC. Somewhat surprisingly, the Commission not only did not accept the invitation; it never even referred to it or attempted to explain the considerations which led it to reject this best possible means of ascertaining the correctness of the Turkish contentions.

The Commission's reluctance to investigate the facts concerning the exercise of authority and control in northern Cyprus is even more apparent in the 1983 Report. In its 1978 Decision the Commission stated that its conclusion that "Turkey's jurisdiction in the north of the Republic of Cyprus . . . cannot be excluded on the ground that jurisdiction in that area is allegedly exercised by 'Turkish Federated State of Cyprus'" did not prejudge "the imputability to Turkey of any particular violation of the Convention which may be established in an examination of the merits of the

application."8/ However, on turning to the consideration of the imputability to Turkey of acts of the TFSC administration in the 1983 Report, one finds only a repetition of the passage in the 1978 Decision, followed by this bald statement:

> "The Commission does not find it necessary to add anything to its above observations as regards the imputability to Turkey of any particular violation of the Convention by her own armed forces which may be established in Parts II and III of this Report. As to violations of the Convention by acts of the Turkish Cypriot administration the Commission considers that, as submitted by the applicant Government, the existence of some kind of civil administration in northern Cyprus does not exclude Turkish responsibility given the degree of control which Turkey has in northern Cyprus. In particular, the Commission is satisfied that fundamental changes of the conditions in northern Cyprus cannot be decided without the express or tacit approval of the Turkish authorities."9/

Thereafter, the Commission attributed responsibility to Turkey for a range of acts, entirely without regard to whether they might actually have been performed by the Turkish forces, by organs to the TFSC or by anyone else.10/

Here, as in its 1978 Decision, the Commission made no attempt to investigate the position in northern Cyprus. It

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8/ 1978 Decision "The Law" §§ 25-6.

9/ 1983 Report, paragraph 64.

10/ See, 1983 Report, §§ 135-6, 150-5 and 158.

appears to have assumed that the Turkish forces exercised complete control and the TFSC functioned only insofar as those forces wished or permitted. The detailed submission made by Turkey in 1978 about the constitution and government of the TSFC were disregarded as they had been in 1978.

124. With regard to the question of the essential identity of the third application with the two first applications, the Commission followed the same cursory approach as in regard to the preceding issue. Thus, in § 58 of the Report, the Commission recognized that the issue of missing persons in the third application is essentially the same as in the two previous applications. The Commission, however, reconsidered this issue in the light of what it called "new relevant information indicated in the present application."

As to the remaining complaints, the Commission, after having noted that these complaints "relate substantially to a situation in Cyprus which already has been the subject of the Commission's Report in the two previous applications" (§ 59), nevertheless decided that the applicant party had a legal interest in a new determination of the remaining complaints.

Before discussing this opinion it is appropriate to draw the attention of the Committee of Ministers to the surprising way in which the Commission decided to assess Resolution DH(79)1 by which the Committee of Ministers had put a final point on the allegations made in the two previous

applications, allegations which are essentially the same as those made in the present, third application.

While in its decision on the admissibility, the Commission argued that it had not to take into consideration the decision of October 21, 1977 (which preceded Resolution DH (79) 1), on the ground that this decision "had not been communicated to the Commission" (§ 51 of Decision of July 10, 1978), the Commission now only "notes" the terms of Resolution DH (79)1 (§ 62 of the Report) without analyzing in any way whatsoever their impact on the third application. In other words, the Commission simply ignored what the Committee of Ministers had decided to "putting an end to the examination of the case of Cyprus v. Turkey."

125. Returning to the point made by the Commission on the "new information" furnished to it as to the complaint on missing persons, the Committee of Ministers might wish to look at the nature of this "new information" and its probative value which, in the opinion of the Turkish Government, is totally lacking.

126. The "new information" is apparently the testimony given on the cases of five missing persons. On two out of these five cases, the Commission itself found evidence offered by the Greek-Cypriot Administration through testimony of so-called "eye-witnesses" as not convincing (see §§ 96 to 110 of the Report). As to the cases of the remaining three

allegedly missing persons - Panayiotis Christoforou (see §§ 100 to 102 of the Report), Andreas Gemano (see §§ 103 to 105 of the Report) and Costakis Georghiou (see §§ 106 to 108 of the Report) - the Commission based its conclusions on the uncorroborated testimony of a few witnesses produced by the Greek-Cypriot Administration.

The treatment of evidence in all these three cases is strikingly weak and superficial. If any domestic tribunal had acted likewise, the Commission, if asked to review such action under the criteria of "fair trial", would most likely have qualified such testimony as not meeting the standards of Article 6 of the Convention.

Nothing could illustrate this observation more than to quote the relevant parts of the Commission's Report, in which the Commission easily resolved obvious contradictions in the statements of witnesses, for example, in one case, by assuming that the interested person "did not shave for some time after 14 August 1974".

In other words, the Commission (§ 102) found it established by the concordant (sic!) evidence of two witnesses, that one of the missing persons was in Turkish custody after August 14, 1974. However, in the preceding paragraph of the Report, the Commission admitted that testimony given by the two witnesses was not fully concordant in the description of the person allegedly in Turkish custody,

but this lack of concordance was brushed away by the Commission by the following sentence:

> "This (difference of describing the identity of the missing person) can in the Commission's view be explained by the fact that this missing person did not shave for some time after 14 August 1974".

The government of Turkey prefers not to comment any further on this statement, which speaks for itself so far as the astoundingly superficial standards are concerned which the Commission applied in the admission of proof.

Moreover, what other proof did the Commission attempt to obtain? Obviously none. Why then did the Commission accept, as true, the deposition by some of the witnesses named by the Greek-Cypriot Administration, while the testimony of another witness (§ 105 of the Report) was rejected as being "wishful thinking"? Which criteria was applied for the purpose of such an important differentiation in the assessment of witness testimony? Have the other witnesses not also been guided by "wishful thinking"?

And why has the Commission not tried to check the results of its "findings" with the information obtained by the International Red Cross, and this the more so as the Commission was aware of the existence of a tri-partite Committee set up with the Red Cross to look into the problem of missing persons of both sides.

Had the Commission consulted the Red Cross documenta-

tion, it would have found out that, for example, the first of the three named missing persons - Panayidis Christoforous - was handed over to the Red Cross under the name of Panagiotis Christou (No. 545 on the list of prisoners of war Group 5).

126 a. And yet, in spite of such most fragile findings in respect of three allegedly missing persons, the Commission reached the sweeping conclusion (§115 of the Report), that "on the basis of its investigation of five cases and of further material submitted, that, of the remaining persons, an indefinite number have been in Turkish custody in 1974 after the cessation of hostilities" - and consequently imputed to Turkey a violation of Article 5 of the Convention.

127. As to the proof of other allegations declared admissible by the Commission, the approach is equally weak and disturbing.

128. The issue of "displaced persons and separation of families" was treated in the Report of the Commission in §§ 132 to 136.

The Commission, after having recalled that the same issue had already been before it on the basis of the previous applications with a conclusion that Turkey had violated Article 8 of the Convention, now simply added that the continuation of the situation was an aggravating factor which justified to state again a violation of Article 8.

What is new in this assessment as compared to the Report on the earlier applications? Only the "continuation" of the alleged violation.

If this element of "continuation" really is sufficient to fabricate a new application, the Commission delivers almost a free ticket to the Greek-Cypriot Administration to file again and again unsubstantiated allegations adding only the element of continuity to the previous false accusation so as to allow the Commission to state that this is not an allegation essentially the same as the corresponding previous one.

With all due respect, the Government of Turkey believes that the Commission, in arguing as it did, has not acted in conformity with the terms and the spirit of the Convention.

129. This might be the most appropriate place to recall in unequivocal terms that Turkey has nothing to do with the question of missing persons in Cyprus and is not a party to the issue. This humanitarian question which unfortunately has been the subject of constant exploitation by the Greek-Cypriot side is an issue between the Turkish-Cypriots and the Greek-Cypriots. At the present time there exists a specific organ, namely the Committee on Missing Persons (CMP) that handles this question. The CMP which was established and had its first meeting in July 1981,

is the only competent body to deal with the question of missing persons in Cyprus. The CMP has three members , one from the International Committee of the Red Cross and appointed by the Secretary General of the United Nations, and one each from the two sides in Cyprus. The CMP has its own terms of reference, written and approved formally by both sides. The CMP is currently engaged in the conduct of its business in an effort to resolve the cases of missing persons of both sides.

The CMP is the only body that has been accepted by both sides to deal withthe missing persons issue. It is therefore clear that there is no place for any other body dealing with this question, as such an attempt would constitute an interference in the work and functioning of the CMP.

Turkey is not a member of CMP and does not participate in the CMP's work. The Greek-Cypriot attempts to involve Turkey in this issue. is sheer political abuse and testifies to the fact that even as they accept the competence and jurisdiction of the CMP, the Greek-Cypriots try to drag the question to other fora such as the Commission. The CMP is at work and given a reasonable chance, it ought to be able to resolve this painful problem in a reasonable period of time. The question of missing persons is a matter within the exclusive jurisdiction of the two sides in Cyprus. If there are any inquiries about the missing persons issue or about specific cases of missing persons, they must be directed to the Turkish Cypriot or Greek Cypriot authorities within the context of the CMP procedures.

130. By returning to the report of the Commission, it should be noted that the third group of allegations (deprivation of property rights) has been dealt with by the Commission in the same superficial manner as the two first groups of allegations. Throughout the relevant chapter of the Report, the Commission, as it has done with regard to the two previously mentioned complaints, has mainly repeated its statements in the report on the two earlier applications. The only "new issue" under this third heading was a reference to a law of the Turkish Federate State of Cyprus regulating distribution of land in Northern Cyprus.

And on the alleged discrimination of Greek-Cypriots, the Commission stated (in § 162) that it had nothing to add to its conclusions reached in the previous report. Is this not another confirmation of the identical nature of the third application as compared to the two previous ones?

131. For all these superficial and vague assumptions, the Commission needed 6 years and 1 month to reach its conclusions. The case was qualified by the Greek-Cypriot regime as concerning the "most serious massive violation of human rights since the end of the Second World War." Nevertheless, the same Greek-Cypriot Administration did not refrain from recourse to delaying tactics, for its own political purposes, during the proceedings of the case.

132. The Government of Turkey not only rejects completely the conclusions reached by the Commission; it expresses moreover its great concern as to the approach the Commission has followed concerning unsubstantiated allegations and political propaganda by the Greek-Cypriot Administration.

133. For all of the above reasons, Turkey cannot accept as impartial the Report of the Commission, which in this respect is not dissimilar to the Decision taken in 1978 as to the admissibility of the application of the Greek-Cypriot Administration.

V.

Conclusion

134. In the preceding chapters, the Government of Turkey has put the case under consideration in its proper perspective.

135. The third application is only another attempt by the Greek Cypriot Administration of furthering purely political goals outside the framework of efforts deployed by the UN Secretary General, acting within the mission of good offices entrusted to him by the UN Security Council to bring the talks between both directly interested sides to a fruitful solution. Such talks are the only way toward a peaceful and durable solution of the Cyprus problem. The importance of intercommunal talks is underlined as well by the Committee of Ministers in its Resolution DH (79) 1, by which it put an end to the first two applications by the Greek-Cypriot regime.

136. In addition to the purely political nature of the third application, the Committee of Ministers should be aware of the extraordinary legal deficiencies of both the Decision of 1978 by which the Commission declared the third application admissible and the Opinion of 1983 contained in the Report of the Commission. The Government of Turkey in Chapters III and IV of the present memorandum has commented in detail the critical portions of both documents issued by the Commission.